

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**PATTY BEALL, MATTHEW
MAXWELL, TALINA MCELHANY,
KELLY HAMPTON, CASEY BROWN,
JASON BONNER, KEVIN TULLOS,
ANTHONY DODD, ILENE MEYERS,
TOM O'HAYER, JOY BIBLES, DON
LOCCHI AND MELISSA PASTOR,
individually and on behalf of all other
similarly situated;**

Plaintiffs,

**TYLER TECHNOLOGIES, INC. AND
EDP ENTERPRISES, INC.
Defendants.**

2:08-cv-422 TJW

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO EXTEND
THE DEADLINE FOR PLAINTIFFS TO RESPOND TO DEFENDANTS'
MOTION TO DECERTIFY CLASS**

Defendants Tyler Technologies, Inc. and EDP Enterprises, Inc. (collectively “Tyler”)¹ respectfully file this response in opposition to Plaintiffs’ motion to extend the deadline to respond to Tyler’s motion to decertify this case as a collective action under Section 216(b) of the Fair Labor Standards Act (“FLSA”) and, in support thereof, would show as follows:

I. CHRONOLOGY AND FACTUAL BACKGROUND

1. Tyler filed its motion to decertify on September 24, 2010, the deadline for such motion under the Court's current scheduling order. The evening prior to that deadline, Plaintiffs filed an amended complaint asserting, for the first time, various subclasses of Plaintiffs based on, among other things, differences in job functions and the different Tyler divisions in which

¹ EDP Enterprises, Inc. was acquired by Tyler in September 2007 and is no longer a distinct legal entity.

particular Plaintiffs work or worked.

2. Previously, the Court granted conditional certification under Section 216(b) of the FLSA based on Plaintiffs' original complaint, which did not identify the subclasses referenced in Plaintiffs' amended complaint. Accordingly, after litigating this case for approximately two years, Plaintiffs are asking the Court to certify a collective action based on subclasses that were not raised at the conditional certification stage.

3. In any event, immediately after Tyler filed its motion, Plaintiffs' counsel requested a 16 day extension in which to file their Response to Tyler's motion. Counsel for Tyler agreed to a seven day extension, which would have given Plaintiffs 21 days, rather than the usual 14 days under the Court's local rules, to file their Response.

4. Shortly thereafter, on or about October 7, 2010, counsel for Plaintiffs again contacted counsel for Tyler and requested yet another extension, this time of an additional 21 days in which to file their Response. As Plaintiffs point out in their certificate of conference, Tyler once again agreed to give Plaintiffs now an additional seven days which, combined with the first extension, would have given Plaintiffs twice the amount of time afforded by the local rules to file their Response to Tyler's motion to decertify.

II. REASONS FOR OPPOSITION TO PLAINTIFFS' MOTION

5. Plaintiffs' motion for extension indicates that the reasons for the relief sought are the trial schedule of one of Plaintiffs' counsel and a family medical emergency of another of Plaintiffs' counsel. As indicated by the signature block on Plaintiffs' current motion, Plaintiffs are represented by a total of three (3) different law firms and seven (7) different lawyers. Plaintiffs' motion fails to indicate why none of the other attorneys on this case can assist with drafting the response to Defendants' motion to decertify such as to justify the lengthy extension

requested.

6. Moreover, the extension requested by Plaintiffs is potentially prejudicial to Tyler. Whether this case will proceed as a collective action, either as originally certified on a conditional basis or based on the newly identified subclasses in Plaintiffs' amended complaint, obviously is critical to how this case will be litigated. Indeed, there are discovery and summary judgment deadlines upcoming in the next few months. This Court's ruling on Tyler's motion to decertify affects, for example, how many depositions will need to be taken, what topics would need to be covered in such depositions, and whether and what kind of motions for summary judgment might be filed. The longer the delay in obtaining a ruling on Tyler's motion to decertify, the more uncertainty permeates the case and the more likely it is that potentially unnecessary costs and fees must be borne by the litigants.

7. Accordingly, while Tyler is sympathetic to Plaintiffs' position and does not oppose an additional extension of seven (7) days in which to file their response to Tyler's motion to decertify, Tyler opposes the requested extension of an additional twenty-one (21) days and respectfully requests that the Court deny Plaintiffs' current motion.

Respectfully submitted:

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been served via the Court's electronic filing system on this 15th day of October, 2010, as follows:

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